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MEMORANDUM OF LAW

DATE: August 7, 1996

NAME: Byron Estes, Project Manager, City Redevelopment Program

FROM: City Attorney

SUBJECT: Demolition of Non-Historic Structures Within the Barrio Logan Redevelopment Project Area

Issue

By Memorandum, dated July 31, 1996, you ask for a legal opinion as to whether certain non-historic structures within the Barrio Logan Redevelopment Project Area (the "Project Area"), which have been declared public nuisances by the Code Compliance Division of the Community and Neighborhood Services Business Center of the City Manager's office (the "Code Compliance Division"), can be demolished without first obtaining a Coastal Development Permit.

Facts

According to several telephone conversations and your Memorandum of July 31, the facts are as follows: The Redevelopment Agency of The City of San Diego (the "Agency") acquired property within the Project Area for the proposed Mercado Commercial Project. The Project Area is within the coastal zone. On the property acquired, there are eight vacant structures which have been subject to break-ins, vagrancy, fires, and illegal dumping, despite efforts to keep them boarded up. As a result of these activities, the Code Compliance Division issued Declarations of Public Nuisance for all the structures on July 26, 1996. These Declarations require that the nuisances be abated within thirty days. It is the desire of the surrounding community that these structures be demolished, and Agency staff agrees that this would be the most effective way to abate the nuisances.

Four of the eight structures have been determined to be potentially historic due to their age, and as there is federal money involved in the Mercado Commercial Project, they are the subject of a Section 106 Historic Study currently being conducted pursuant to 36 CFR 800. Given the requirements of federal law in this area, any action to demolish these structures must wait until the conclusion of the 106 process. These requirements have been the subject of a previous inquiry and are not at issue at this time.

The four remaining structures are not subject to the 106 process and appear to be subject only to the Barrio Logan Planned District Ordinance, found in San Diego Municipal Code ("SDMC") section 103.0901 et seq., and SDMC section 105.0201 et seq. which governs the issuance of Coastal Development Permits.

Short Answer

It appears that you may demolish the four structures that are not the subject of the Section 106 Historic Study in order to abate a nuisance without first obtaining a Coastal Development Permit.

Analysis

SDMC section 103.0906(c) states that "[a] Coastal Development Permit shall be required for all proposed development within the Barrio Logan Planned District except for development specifically exempted under Municipal Code section 105.0204."

SDMC section 105.0204 says in pertinent part that "[f]or the following types of development, no coastal development permit shall be required [for] . . . D. Any action necessary to abate a nuisance as provided under Public Resources Code Section 30005(b)." California Public Resources Code section 30005 reads "[n]o provision of this division [the California Environmental Quality Act] is a limitation on any of the following . . . (b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances."

It seems that the four structures that are not part of the 106 Historic Study can be demolished without first receiving a Coastal Development Permit. They are not potentially historic, and the appropriate division of the City Manager's office has determined that a nuisance exists at each of the structures, and that the nuisances must be abated. Given this situation, a Coastal Development Permit is not required prior to the demolition. However, there is nothing in the code sections and statute quoted above that would eliminate the requirement to obtain the requisite demolition permit(s).

Byron Estes

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August 7, 1996

If you wish to discuss this matter further, or have any further questions, please feel free to call me at your convenience.

JOHN W. WITT, City Attorney

By

Allisyn L. Thomas
Deputy City Attorney

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